13.

SUPREME COURT OF THE UNITED STATES.

No. 346.

THE BOARD OF SUPERVISORS OF WASHINGTON COUNTY, IOWA, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES EX REL. RICHARD MORTIMER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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A Pleas and proceedings had in the Circuit Court of the United Statcs for the district of Iowa, at the regular term thereof, held at the city of Des Moines, of the third Tuesday of October, A. D. 1868. Present, the Hon. Sam. F. Miller, circuit judge, presiding, and J. M. Love, district judge.

B Be it remembered that heretofore, to wit, on the 15th day of May, A. D. 1868, there was filed in the office of the clerk of the Circuit Court of the United States for the district of Iowa, in words and figures following, to wit :

1 In the Circuit Court of the United States for the district of Iowa, May term, A. D. 1868.

Petition for mandamus.—Filed May 15, '68.

THE UNITED STATES ON THE RELATION OF Richard Mortimer *vs.* THE BOARD OF SUPERVISORS OF WASHington County. } No. 548.

To the judges of the Circuit Court of the United States for the district of Iowa :

Now comes Richard Mortimer, and gives this court to be informed that he is a citizen of the State of New York, and the county of Washington is a municipal corporation created by the laws and a citizen of the State of Iowa.

That on the 21st of November, 1853, the county judge of Washington county, Iowa, did. in due form of law, submit to the electors iof said county, the question of a subscription by said county of one hundred thousand dollars to the stock of the Philadelphia. Ft. Wayne, and Platte River Air Line Railroad Co. and issuing the bonds of said county to pay subscription, bearing six per cent. interest and having not more than twenty years to run ; and said proposition was adopted by a majority of the voters of said county and duly entered at large on the minute book of said county.

2 That on the 7th day of August, 1854, the county judge of said county of Washington, submitted to the electors of said county of Washington the proposition, that the said Washington county will rescind fifty thousand dollars of the stock voted to the Philadelphia, Ft. Wayne, and Platte River Air Line Railroad Co., at the special election held in said county in November, 1853, and subscribe the same to the Mississippi and Missouri railroad; and that there be issued county bonds therefor, bearing interest at a rate not greater than ten per cent. per annum, and payable in twenty years from date, and that there be a tax of five mills on the dollar if necessary, levied on the taxable property of said county from year to year, for the purpose of paying the interest on said bonds, and after the expiration of fifteen years the rate of tax be so increased as not to

exceed one per cent. on the dollar, if necessary, for the purpose of paying off said bonds—said rate of tax to be continued until said bonds with the interest is all paid, unless said bonds are otherwise disposed of, and that said bonds shall not be issued except said Mississippi and Missouri Railroad Company receive said bonds at their par value in payment of stock in said railroad, and then only as fast as the road progresses towards completion within the limits of said county.

That at said election said proposition was duly adopted by
3 a majority of the electors of said county, and the proposition and vote were by the county judge duly entered at large on the minute book of said county, and on the 5th day of April, 1858, the county judge of said county of Washington, did in due form of law, submit to the electors of Washington county the following proposition : That the county of Washington, in the said State, will aid in the construction of the Mississippi and Missouri railroad by the subscription of one hundred thousand dollars in addition to the $50,000 already authorized to the capital stock of said railroad company, and the bonds of said county be issued in payment of said stock, bearing interest at the rate of ten per cent. per annum payable in twenty years from date, and that there be a tax of not more than three mills on the dollar on the taxable property of said county from year to year for the purpose of paying the interest on said bonds, and after the expiration of fifteen years, the said tax be so increased as not to exceed ten mills on the dollar for the purpose of paying off said bonds—said tax to continue from year to year until said bonds are all paid off unless otherwise disposed of ; said bonds not to be issued unless said company give to said county good and sufficient security approved by the county judge in the sum of two hundred
4 thousand dollars, and conditioned that said road be completed and in good running order to the town of Washington, in said county and State, by the 1st day of September, 1858, and that a depot be permanently established not more than one-half mile from the court-house in said town of Washington, and not then unless said company take said bonds at their face, in payment for stock in said railroad; said stock to be issued direct to the county; said election to governed by the election laws of the State of Iowa. That at said election a majority of the votes cast were in favor of said proposition, and the county judge did cause the same and the result of the vote to be entered at large on the minute book of said county.

That each class of said bonds were issued by the county judge, with coupons or interest notes for the interest, payable to James Dawson, or bearer, and the relator became the bona fide owner and holder of a large quantity of said bonds.

That on the 16th day of October, A. D. 1867, the relator by the consideration of this court, recovered judgment against the county of Washington and by due process of law, for $4,363 45 costs, taxed at $36 35. 7 per c. interest from the 16th day of October, 1867, on interest coupons off said bonds, and interest thereon as by the the records of said cause now in this court will more fully appear.

5 That execution has been issued on said judgment and returned "no property found."

That of said judgment one-third was due on the bonds issued under the vote of 7th August, 1854, and two-thirds due on the bonds issued under the vote of 5th April, 1858.

That a demand has been made on the said board of supervisors, that they levy, and cause to be collected, taxes to pay said judgment, interest and costs, and they have neglected and refused so to do.

That by such votes, hereinbefore recited, it became and is the duty of said board of supervisors of Washington county, Iowa, to levy a specific tax of not exceeding five mills on the dollar of the valuation of the taxable property of said county, to pay off that portion of said judgment which is for interest on bonds issued under the vote of 7th Aug., 1854, and a specific tax of not exceeding three mills on the dollar of the valuation of the taxable property of said county, to pay off that portion of said judgment which is for interest on bonds issued under the vote of 5th April, 1858.

The relator further states that, by the general laws of the State of Iowa, it is pleaded and made the duty of such board of supervisors to levy, as soon as practicable, a tax sufficient to pay off any judgments against the corporation.

6 That by the general laws of the State of Iowa, all the property of a public nature owned by the said corporation is exempt from execution, and the said county has no other property subject to execution.

That the taxable property of said county exceeds the sum of four millions of dollars.

That the relator is without other adequate remedy at law.

He prays for a writ of mandamus to be issued from this court, to be directed to the board of supervisors of Washington county, Iowa, commanding them forthwith to levy and cause to be collected a specific tax, not exceeding three mills on the dollar, of the taxable property of said county, sufficient to pay the one-third of said judgment, to wit, $1,454 45 and interest, under and by virtue of the vote of the electors of said county on the 7th of August, 1864, and a specific tax of not over three mills on the dollar of the taxable property of said county, sufficient to pay the two-thirds of said judgment, to wit, $2,908 96 and interest and costs, $36 35, and costs of this proceeding, under and by virtue of the vote of the electors of said county on the 5th of April, 1858, and that therewith, as soon as collected, they pay and satisfy said judgment, interest and costs, and costs of this proceeding.

RICHARD MORTIMER.

7 STATE OF IOWA, *Scott County*, *ss:*

I, James Grant, being duly sworn, do state on oath, that I am relator's attorney; that I recovered the judgment herein named, caused execution to be issued and demand served, and know the facts herein stated to be true.

JAMES GRANT.

Subscribed and sworn to by J. Grant before me and in my presence, this 14th day of March, A. D. 1868.

W. G. WOODWARD,
Clerk C. C. U. S.

7½ And afterwards, to wit, on the 27th day of May, A. D. 1868, the same being at the regular May term of said court, the following was ordered of record, to wit:

THE UNITED STATES EX. REL. RICHARD Mortimore
vs.
THE BOARD OF SUPERVISORS OF WASHINGTON County, Iowa.
} No. 258, law.

This cause now coming on to be heard, Grant & Smith for the relator files his information for a writ of mandamus, and the court doth order that an alternative writ issue as prayed for, returnable at the next term of this court.

7¾ And afterwards, to wit, on the 8th day of June, A. D. 1868, there was issued out of the office of the clerk of said court an alternative writ of mandamus, in words and figures following, to wit:

8 The President of the United States of America to the Board of Supervisors of Washington county, Iowa:

Mandamus.

Whereas it has been represented to our Circuit Court of the United States for the District of Iowa, that Richard Mortimer is a citizen of the State of New York, and the county of Washington is a municipal corporation created by the laws, and a citizen of the State of Iowa; that on the 21st of November, 1853, the county judge of Washington county, Iowa, did, in due form of law, submit to the electors of said county the question of a subscription by the said county, of one hundred thousand dollars to the stock of the Philadelphia, Fort Wayne & Platte River Air Line Railroad Co., and issuing the bonds of said county to pay said subscription, bearing six per cent. interest, and having not more than twenty years to run, and said proposition was adopted by a majority of the voters of said county, and duly entered at large on the minute book of said county; that on the 7th day of August, 1854, the connty judge of said county of Washington submitted to the electors of said county of Washington the proposition that the said Washington county will rescind fifty thousand dollars of the stock voted to the Philadelphia, Ft. Wayne & Platte River Air Line Railroad Co., at the special
9 election held in said county, in November, 1853, and subscribe the same to the Mississippi and Missouri railroad, and that there be issued county bonds therefor, bearing interest at a rate not greater than ten per cent. per annum, and payable in twenty

years from date, and that there be a tax of five mills on the dollar, if necessary, levied on the taxable property of said county from year to year for the purpose of paying the interest on said bonds, and after the expiration of fifteen years the rate of tax be so increased as not to exceed one per cent. on the dollar, if necessary, for the purpose of paying off said bonds, said rate of tax to be continued until said bonds, with the interest, is all paid, unless said bonds are otherwise disposed of; and that said bonds shall not be issued except said Mississippi and Missouri Railroad Company receive said bonds at their par value in payment of stock in said railroad, and then only as fast as the road progresses towards completion within the limits of said county. That at said election said proposition was duly adopted by a majority of the electors of said county, and the proposition and vote were by the county judge duly entered at large on the minute book of said county; and on the 5th day of April, 1858, the county judge of said county of Washington did in due
10 form of law submit to the electors of Washington county the following proposition: "That the county of Washington, in said State, will aid in the construction of the Mississippi and Missouri railroad by the subscription of one hundred thousand dollars, in addition to the $50,000 already authorized, to the capital stock of said railroad company, and the bonds of said county be issued in payment of said stock, bearing interest at the rate of ten per cent. per annum, payable in twenty years from date, and that there be a tax of not more than three mills on the dollar on the taxable property of said county from year to year for the purpose of paying the interest on said bonds, and after the expiration of fifteen years the said tax be so increased as not to exceed ten mills on the dollar, for the purpose of paying off said bonds, said tax to continue from year to year until said bonds are all paid off, unless otherwise disposed of, said bonds not to be issued unless said company give to said county good and sufficient security, approved by the county judge, in the sum of two hundred thousand dollars, conditioned that said road be completed and in good running order to the town of Washington, in said county and State, by the 1st day of September, 1858, and that a depot be permanently established not more than one-half
11 mile from the court-house in said town of Washington, and not then unless said company take said bonds at their face in payment for stock in said road, said stock to be issued direct to the county, said election to be governed by the election laws of the State of Iowa." That at said election a majority of the votes were cast in favor of said proposition, and the county judge did cause the same and the result of the vote to be entered at large on the minute book of said county; that each class of said bonds were issued by the said county judge, with coupons or interest notes for the interest, payable to James Dawson or bearer, and the relator became the bona fide owner and holder a large quantity of said bonds. That on the 16th day of October, A. D. 1867, the relator, by the consideration of this court, recovered judgment against the county of Washington by due process of law for $4,363 45, costs taxed at $36 35,

and 7 per cent. interest from the 16th day of October, 1867, on interest coupons of said bonds and interest thereon, as by the records of said cause now in the court will more fully appear; that execution has been issued on said judgment and returned "no property found;" that of said judgment one-third was due on the bonds issued under the vote of 7th of August, 1854, and two-thirds due on the bonds issued under the vote of 5th of April 1858; and that a
12 demand has been made on the said board of supervisors, that they levy and cause to be collected taxes to pay said judgment, interest and costs, and they have neglected and refused so to do; that by such rules hereinbefore recited it became and is the duty of said board of supervisors of Washington county, Iowa, to levy a specific tax of not exceeding five mills on the dollar of the valuation of the taxable property of said county, to pay off that portion of said judgment which is for interest on bonds issued under vote of 7th of August, 1854, and a specific tax not exceeding three mills on the dollar of the valuation of the taxable property of said county to pay that portion of said judgment which is for interest on bonds issued under vote of 5th of April, 1858.

The relator further states that by the general laws of the State of Iowa it is provided and made the duty of such board of supervisors to levy, as soon as practicable, a tax sufficient to pay off any judgment against the corporation; that by the general laws of the State of Iowa all the property of a public nature owned by the said corporation is exempt from execution, and the said county has no other property subject to execution; that the taxable property of said county exceeds the sum of four millions of dollars; that the relator is without other adequate remedy at law.

13 Now, therefore, we being willing that full and speedy justice should be done in these premises, do command you, the board of supervisors of Washington, Iowa, forthwith to levy and cause to be collected a specific tax of not exceeding three mills on the dollar of the taxable property of said county, sufficient to pay the one-third of said judgment, to wit, $1,454 48 and interest, under and by virtue of the vote of the electors of said county, on the 7th of August, 1854, and a specific tax of not over three mills on the dollar of the taxable property of said county, sufficient to pay the two-thirds of said judgment, to wit, $2,908 96 and interest, and costs, $36 35, and costs of this proceeding, under and by virtue of a vote of the electors of said county on 5th of April, 1858, and therewith, as soon as collected, you do pay and satisfy said judgment, interest and costs, and costs of this proceeding, or that you appear before our said Circuit Court, at Des Moines, at the court-house, in Polk county, on the second day of the next term of said court to be held on the third Tuesday of October, A. D. 1868, to show case why you refuse so to do.

Witness the Hon. Salmon P Chase, Chief Justice of our Supreme Court, and the seal of said Circuit Court this 8th day of June, A. D. 1868.

W. G. WOODWARD, *Clerk.*

14 *Return of writ of mandamus.*

The writ of which the within is a copy came into my hands for service on the 15th day of June, 1868, and I served the same on the members of the board of supervisors of Washington county, as follows: On William Allen, Wm. Billingsley, A. Younkin, George Means, J. M. Glasgow, J. Alex. Young, J. W. Tallman, Wm. Said, Wm. J. Wilson, J. S. Adams, J. F. McCall, M. P. Darbyshire, R. Israel and Geo. W. Foreman, the 7th day of Sept. 1868, by reading and delivering to each member of said board a copy of said writ, on C. F. Jones, clerk of the board of supervisors, the 7th day of Sept. 1868, by reading and delivering to him a copy of said writ, and on J. A. Henderson, chairman of said board, the 7th day of Sept. 1868, by reading and delivering to him the original writ.

The above list includes all the members of said board of supervisors, and they were all served in said county as aforesaid.

G. W. CLARK,
U. S. Marshal.
By J. G. CLARK, *Dep.*

Marshal's fees.

Mileage	$13 80
Service on 16	32 00
16 copies at	40 00
	$85 80

14½ And afterwards, to wit on the 17th day of October, A. D. 1868, the same being at the regular term of said court, a demurrer to the return of the alternative writ was filed in open court, in words and figures following, to wit:

U. S. C., dist. Iowa.

15 *Demurrer.—Filed Oct.* 26, 1868.

THE UNITED STATES ON THE RELATION OF Richard Mortimer *vs.* THE BOARD OF SUPERVISORS OF WASHington county. } Mandamus.

The plaintiffs demur to the return of the alternative writ for the following causes:

1. All the defences set up to performing the conditions of the writ are defences to the action of the plaintiff on the original debt, and should have been made to the action. The pending of a suit or judgment in another tribunal is no bar to the execution of a judgment in this court, to which it was not pleaded.

2. The judgment of a State court is no bar to an execution or mandamus to compel levy of tax to pay a judgment in this court, which is rendered herein, by due process of law, though the proceedings in the State Court were commenced before the proceedings in this court.

16 3. It appears by the record that originally the plaintiff in this suit was a party in interest to the suit of Clarke Durant in this court, originally commenced before he and the plaintiff appeared in the State Court, and the State Court proceedings were pleaded in this court, and overruled.

4. The proceedings in the State Court being a judgment impairing the obligation of the contract, are null and void, and binding on no one. Wherefore, etc.

GRANT, *for Pl'ff.*

16½ And afterwards, to wit, on the 27th day of October, A. D. 1868, the same being at the regular term of said court, the following was ordered of record, to wit.

THE UNITED STATES EX REL. Richard Mortimore *vs.* THE BOARD OF SUPERVISORS OF Washington county, Iowa. } 548. Law.

And now comes the plaintiff by Grant, and the defendants by Strong, and the plaintiff's demurrer to defendant's return to said alternative writ is sustained, and it is ordered that a peremptory writ issue against the defendants, as prayed for, commanding the defendants to levy the taxes named in said alternative writ returnable to the next term of this court. To which rulings of the court the defendants then and there excepted.

And afterwards, to wit, on the 28th day of October, A. D. 1868, the same being of said October term, a writ of error was sued out of the office of said clerk and allowed in open court in words and figures following, to wit.

17 *Writ of Error.*—548.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the Circuit Court of the United States for the district of Iowa, greeting:

Because in the record of proceedings, and also in the rendition of the judgment of a plea which is in the said Circuit Court before you, between the United States ex rel. Richard Mortimer and the Board of Supervisors of Washington county, Iowa, manifest error hath happened to the great damage to the said defendants, as by their complaint appears, and it being fit that the error, if any there hath been,

should be duly corrected and [and] speedy justice done to the parties aforesaid in this behalf. You are hereby commanded, if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all the things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same at Washington on the first Monday in December, A. D. 1868, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid
18 being inspected, the Supreme Court may cause further to be done to correct that error what of right and law should be done.

Witness the Hon. Salmon P. Chase, chief justice of the Supreme Court of the United States this 28 day of October, A. D. 1868, and of the independence of the United States the ninety-second.

W. G. WOODWARD,
Clerk Circuit Court U. S., Iowa.

Allowed, Oct. 28, 1868.

SAM. F. MILLER, *Judge.*

I acknowledge service of this writ of error, Oct , 1868.

And on the same day, Oct. 28th, A. D. 1868, an appeal bond was filed and approved in open court in words and figures following, to wit.

548.—*Bond, filed Oct.* 28, '68.

19 We, the board of supervisors of the county of Washington, Iowa, as principal, and J. Henderson, as surety, acknowledge ourselves indebted to Richard Mortimer in the sum of five hundred dollars, to be void upon the following conditions:

Whereas said Richard Mortimer has obtained the allowance and order for a peremptory writ of mandamus in the Circuit Court of the United States for the district of Iowa, in suit of mandamus, wherein the United States ex rel. Richard Mortimer is p'lff and said board of supervisors are def'ts, from which order def'ts have taken an appeal upon writ of error to the Supreme Court of the United States. Now if said def'ts shall prosecute said appeal and pay all costs, damages and amounts that shall be adjudged against them in the said suit,

Witness our hands this day of Oct., 1868.

Board Supervisors of Washington county, by

J. A. HENDERSON,
President of Board of Supervisors.

J. A. HENDERSON,
Surety.

Approved Oct. 28, 1868.

SAM. F. MILLER.

20 In Circuit Court U. S., for dist. of Iowa.

Citation.

U. S. *ex rel.* RICHARD MORTIMER
vs.
BOARD OF SUPERVISORS OF WASHINGTON county, Iowa. } 548.

To United States of America, ex rel. Richard Mortimer:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the district of Iowa, wherein the United States ex rel. Richard Mortimer is pl'ff, and the Board of Supervisors of Washington county is def't, to show cause, if any you have, why the judgment in said writ of error maintained should not be corrected and speedy justice should not be done to the parties in that behalf. Witness the Hon. Samuel F. Miller, one of the justices of the Supreme Court of the United States, this 28th day of October, A. D. 1868.

SAM. F. MILLER.

I accept service of this citation, 28 Oct., 1868.
JAMES GRANT, *Att'y for Pl'ff.*

20½ And on the same day, Oct. 28th, 1868, an agreement of attorney was filed in words and figures following, to wit:

21 In Circuit Court of U. S. for dist. of Iowa.

548. *Agreement.*

UNITED STATES *ex rel.* RICHARD MORTIMER
vs.
BOARD OF SUPERVISORS OF WASHINGTON county, Iowa. } No. 548.

It is agreed in this case that the answer filed by same def'ts, May 28, 1868, in said court, in case number 478 of United States ex rel. Clark Durant *vs.* The Board of Supervisors of Washington county, Iowa, except as to the names of the parties pl'ff, and date and amount of relator's judgment, shall be considered and treated as filed as the answer in this case, including the exhibits on file with said answer.

HENRY STRONG, *Att'y for Def'ts.*
GRANT, *for Pl'ff.*

22 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the judge of the Circuit Court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Circuit Court before you

between the United States ex rel. Richard Mortimer and the Board of Supervisors of Washington county, Iowa, a manifest error hath happened to the great damage of the said defendants, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf. You are hereby commanded, if judgment be therein given, that then under your seal, distinctly and [and] openly you send the record and proceedings aforesaid, with all the things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at Washington on the first Monday in December, A. D. 1868, in the Supreme Court to be there and then held; that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done to correct that error what of right and law should be done.

23

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 28 day of October, A. D. 1868, and of the independence of the United States the ninety-second.

[SEAL.] W. G. WOODWARD,
Clerk Circuit Court U. S., Iowa.

Allowed Oct. 28, 1868.

SAM. F. MILLER, *Judge.*

I acknowledge service of this writ of error Oct. 1868.

———— ————.

Endorsed: 548. Mortimer *vs.* Wash. co. Writ error.

24 In Circuit Court U. S. for dist. of Iowa.

U. S. *ex rel.* RICHARD MORTIMER
vs.
BOARD OF SUPERVISORS OF WASHINGTON CO., Iowa.

To United States of America, *ex rel.* Richard Mortimer:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the district of Iowa, wherein the United States *ex rel.* Richard Mortimer is pl'ff, and the board of supervisors of Washington county is def't, to show cause if any you have, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

25

Witness the Hon. Samuel F. Miller, one of the justices of the Supreme Court of the United States, this 28th day of October, A. D. 1868.

SAM. F. MILLER.

I accept service of this citation, 28 Oct., 1868.

JAMES GRANT.
Att'y for Relator.

Endorsed: Sup. Court, U. S., 1868, Dec. term, No. 346. Washington county *vs. ex rel.* Mortimer. Writ of error and citation and service. Filed 15 December, 1868.

Endorsed: Citation in 548. U. S. *ex rel.* United States Richard Mortimer *vs.* Board of Supervisors of Washington Co., Iowa. Filed Oct. 28, 1868. W. G. Woodward, Cl'k.

26 Supreme Court of United States.

UNITED STATES *ex rel.* RICHARD MORTIMER, def'ts in error,
vs.
THE BOARD OF SUPERVISORS OF WASHINGTON County, Iowa, pl'ffs in error.

Now come the board of supervisors of Washington county, Iowa, and say there is error in the record and judgment of the court below in this cause, in this, that said court sustained the demurrer of relator to the answer of def'ts, and def'ts assign this as error, and pray the judgment of the court.

H. STRONG,
Att'y for Def'ts.

Endorsed: No. 346. Sup. Court, U. S. U. S. *ex rel.* Richard Mortimer *vs.* Board of Supervisors of Washington Co., Iowa. Assignment of error. Filed 11 December, 1868.

27 I, W. G. Woodward, clerk of the Circuit Court of the United States for the district of Iowa, hereby certify that the above and foregoing is a full, true and complete copy of the pleas and proceedings of said court in the above named case, as full, true and complete as the same now remains of record in my office.

Witness my name and the seal of said court hereto affixed. Done at the city of Des Moines, this 5th day of December, A. D. 1868.

[SEAL.] W. G. WOODWARD, *Clerk.*

Fees for transcript, $7 00, pd. by plaintiff.

O

SUPREME COURT

OF THE UNITED STATES.

DECEMBER TERM, 1869.

THE BOARD OF SUPERVISORS OF WASHINGTON COUNTY, IOWA,
Plaintiffs in Error,
vs.
THE U. S. EX. RE CLARK DURANT,
Defendant in Error.

Error to Circuit Court for the District of Iowa.

THE BOARD OF SUPERVISORS OF WASHINGTON COUNTY, IOWA,
Plaintiffs in Error,
vs.
THE U. S. EX. RE. CLARK DURANT,
Defendant in Error.

Error to Circuit Court of the District of Iowa.

THE BOARD OF SUPERVISORS OF WASHINGTON COUNTY, IOWA, *Plaintiffs in Error,* *vs.* THE U. S. EX. RE. RICHARD MORTIMER, *Defendant in Error.*	*Error to the Circuit Court of the District of Iowa.*

THE MISS. R. R. CO. AND CLARK DURANT AND OTHERS, *Plaintiffs in Error,* *vs.* AMANDA MCLURE AND OTHERS, *Defendants in Error.*	*Error to the Supreme Court of Iowa.*

These four cases are so much alike, in the facts and principles to be settled, that we propose to argue them, in behalf of the defendants in error, in the first three, and the plaintiffs in error in the last, as one case.

STATEMENT OF FACTS.

BOARD SUPERVISORS, *vs.* UNITED STATES EX. DURANT.	*First Durant Case.*

Clark Durant filed his information and obtained an alternative writ of mandamus on the 1st of April, 1867, to compel the levy of taxes to pay a judgment of the Circuit Court of Iowa in his favor, on the following state of facts:

On the 21st of November, 1853, the County Judge of Washington County, Iowa, in due form of law, submitted to the voters of that county a proposition to subscribe a hundred thousand dollars to the Philadelphia, Fort Wayne & Platt River Railroad and issue the bonds of the county therefor. A majority of the electors of said county voted for the proposition and it was duly entered at large on the minute book of the county.

On the 7th of August, 1854, the County Judge, in due form of law, submitted a proposal to rescind fifty thousand dollars of this intended subscription and subscribe fifty thousand dollars to the stock of the Mississippi & Missouri Railroad Company, and issue ten per cent. bonds therefor, payable in twenty years, a tax of five mills for the first fifteen years, and after that one per cent. was to be levied to pay the principal and interest of said bonds. This proposition was duly adopted and recorded at large, and the bonds issued.

On the 5th of April, 1858, by a like vote of the electors of the county, duly submitted and recorded, the county subscribed for a hundred thousand dollars more of stock and issued a like number of ten per cent. interest bearing bonds, to be paid by a tax, first of three mills and then of one per cent., until the bonds and interest were paid;

copies of the bonds and coupons are set out in the information and writ.

On the 15th of August, 1860, misprinted in one part of the record 1861, Clark Durant, holding a large quantity of each class of said bonds and coupons, commenced a suit in the District Court of Iowa to enforce payment. On the 17th of September the defendant, the County of Washington, appeared and interposed a plea to the jurisdiction of the Court, on the ground that McLure and others had commenced proceedings in the State Court against the county officers and unknown owners of the bonds to enjoin the collection of taxes to pay interest on the bonds, and had obtained an injunction in the State Court in the month of April previous. This plea was overruled; the defendants answered, and in March, 1862, an agreed case was made, to stand as a special verdict of a jury; setting out the whole facts connected with the issue of said bonds, and the defendant claims that the bonds were unconstitutional and void. Upon this agreed cause, the Court found the law to be with the plaintiffs, and on the 1st of April, 1862, adjudged that the plaintiff recover of the defendants 25,532 $\frac{50}{100}$ dollars.

The vote on the issue of these bonds required the County Judge and his successor, the Board of Supervisors, to levy yearly taxes to pay the interest on said bonds. The information sets out a refusal to levy these taxes, after demand; the amount of each class of bonds included in the judgment and a prayer for a writ of mandamus.

An alternative writ was issued at May Term,

1867. See record, page 7, returnable to September Term of the same.

To this writ the defendants showed cause (page 12 of record), pleading the same proceedings in the State Court, which they had pleaded in bar of the plaintiff's judgment and which had been overruled as no defence.

The relator replied to this plea, October 30, 1867, that the judgments in the State Court had been reversed. Record, page 21.

On the 13th May, '68, the defendants had leave to file an amended answer, admitting the general allegations of the alternative writ and setting up as a reason why the peremptory writ showed that they had been enjoined by the proceedings in the State Court from levying and collecting any taxes to pay the interest on said bonds, (record, page 23), and that if they proceeded to levy and collect taxes to pay said judgment they would be arrested by the State Court for a contempt of that Court. No copy of the record in the State Court was proffered to the Court below.

The plaintiff demurred to this return.

1. Because the record was imperfect (not all set out).

4. Because any defense arising out of the State Court proceedings ought to have been and was pleaded in bar of the action in this Court, and being held invalid as a bar to the action, was no bar to the writ in that cause.

5. Because the mandamus is the process of execution in this cause, and no proceedings in the

State Court can be a bar to the enforcement of the judgment.

6. Durant having begun his writ in this Court before he intervened in the State Court, no proceedings in that Court can bar his remedy in this.

7. Because this Court, having jurisdiction to render the judgment, has jurisdiction to enforce it, and no State Court can prevent it.

This demurrer was sustained; the defendants abided by the demurrer, and brought this writ of error.

There is nothing for us to argue to sustain this judgment for the peremptory writ; the judgment on the coupons was conclusive, and no defence could be made to the action after that under pretence of State Court proceedings.

But there is a question to which we ask the attention of the Court.

This cause is stayed by a five hundred dollar bond on a twenty-five thousand dollar judgment. This Court has held that as the county property could not run away, the plaintiff was secure of his debt under the new rule; but this Court has not decided that the defendants will not be punished in damages for taking up this cause, and delaying the plaintiff in the collection of his debt, upon a defence in which he has been delayed since 1862, and which has been repeatedly decided against defendant, and we ask of the Court to put a stop to these delay appeals, by giving to the plaintiff in this cause the highest damages which the law permits.

CASE NO.

Same Parties.—Judgment an the same bonds for coupons, falling due after first judgment rendered by due process of law, 16th May, 1867, for $70,652 37; the information prays for a levy of taxes under the execution law for the whole judgment, as well as under the votes issuing bonds.

The defendants admit this issue of bonds, and the recovery of the judgment, and set up the same State Court injunction, of which they furnish a record in part, showing that the cause in the State Court was appealed to the Supreme Court of the State. The demurrer is for the same grounds.

As we know that there is no excuse for this appeal, and the bond is merely nominal, we ask for the affirmance of the judgments, with damages.

BOARD SUPERVISORS WASHINGTON COUNTY

vs.

U. S. EX. RE. R. MORTIMER.

Third case.

These proceedings are on a judgment in favor of Mortimer for subsequent interest on the same bonds as No. , and the remedy is sought under the general execution law as well as the vote on the bonds. The judgment for the plaintiffs was rendered on

16th October, 1867, for $4,363 45. This record sets out the information, alternative writ, demurrer to return, judgments for the plaintiff sustaining his demurrer; no abiding by the demurrer, but a statement that the defendants excepted. There is no bill of exceptions and no return whatever filed. There is an appeal bond and citation within ten days, and an agreement that the answer filed in the case of Clark Durant shall be considered and treated as filed as the answer in this cause. We do not see how this Court is to discover what the answer was without its being filed here, but we shall make no objection on that score, if the plaintiff will let us know in which of these records is the answer.

As the judgment on the coupons was never appealed from, and this writ of error, with a five hundred dollar bond, is a mere sham, we ask the Court to affirm the judgment, with the largest damages known to the law.

We now address the Court for the plaintiffs in error, No.

THE MISSISSIPPI AND MISSOURI R. R. COMPANY and C. DURANT, and others, *Plaintiffs in Error*,

vs.

AMANDA MCLURE and others.

Error to the Supreme Court of Iowa.

This is one of the causes in which the Supreme Court of Iowa undertook to resist the jurisdiction of

the Federal Court, and which they have since reversed, in the habeas corpus case of Holman. Opinions in that cause have been printed in advance of the Reporter, and copies are furnished to the Court.

The facts of the cause are briefly stated.

This is the same cause repeatedly pleaded in the bar of Durant and others vs. The County of Washington and its officers.

On the 12th of April, 1860, Nathaniel McLure and other citizens of Washington County, filed their Bill in Equity, in the State District Court of Washington County, against Owens, the tax collector, Dewey, the County Judge, the Mississippi and Missouri Railroad Company, to restraining the collection of taxes to pay interest on the bonds of the County issued to the Mississippi and Missouri Railroad Company, to aid in building that road, which had been issued during the period when the State Courts held such bonds valid and constitutional. The bill alleged some formal objection to the vote in part of the bonds, but as the bonds recited a compliance with the law, that objection was abandoned, and the whole ground on which the tax was resisted was that the bonds were unconstitutional and void. On the 12th of April, 1860, an injunction against the collection of this tax was allowed by Miller, District Judge. On the 20th of July, 1860, the Mississippi and Missouri Company answered this bill denying any irregularity in the issue of the bonds, setting out in full a compliance with the law by the electors, and a compliance with the contract by the Railroad Company, denying any notice of any irregularity in the issue, alleging that

they were constitutional and valid; that Clark Durant and others were bona-fide holders for value. The complainants on the 26th of July amended their bill and made Clark Durant and others parties, calling on them to disclose what they paid for said bonds, and whether they were stockholders in Mississippi and Missouri Railroad Company. On the 14th of November, 1860, after Durant had commenced his suit in the United States Courts, he and other holders appeared in the State Court and applied to transfer the said cause to the United States Court, their motion was overruled, and the Courts of Iowa holding that where a party appears in a cause for any purpose, he is in for all purposes. Clark Durant and others had no alternative but to answer, and on the 16th of November, 1860, he and others answered, denying all the equities of the bill setting up the constitutionality and validity of the bonds, that they were bona-fide holders for value, and entitled to have the taxes ruled collected for their benefit. The cause in the State was not again moved until January, 1864, when an exception was taken to the answer. On the 16th of June, 1865, Clark Durant and others further answered, that they had formerly appeared in said cause and applied to have the same transferred to the United States Court, and that on the 15th of August, 1860, before them appeared in the State Court, Clark Durant, for himself and them had brought a suit, in the then District Court of the United States for the District of Iowa, upon said bonds and coupons, and that on the 17th of September, 1860, the County of Washington had appeared in said cause, and filed a plea to the ju-

risdiction; that the plaintiff demurred thereto and the demurrer was sustained, and such proceedings were afterwards had; that the defendants pleaded in bar of said action the matter at issue in this bill, and particularly that the bonds were nnconstitutional and void: that an agreed case was made in relation to the issues of said bonds, the cause was submitted to the Court, judgment was rendered on the 22d of May, 1863, in favor of Clark Durant, and the defendant had taken said cause to this Court, where it was then pending. The District Court of Iowa heard the cause in vacation in the bill, answer annexed, record annexed to exhibits, rendered a decree for the plaintiffs, McLure and others, as of January term, 1865. Durant and others appealed this cause to the State Supreme Court, where it was reversed because decided in vacation.

See Opinion, Iowa Reports, page —

The second decree of reversal is not in this Court, but as the fact is conceded in the pleadings and record of the cause, we do not ask for a certiorari to send the order up. After the reversal, the complainants made the Board of Supervisors parties defendants; Durant and others further answered that the case of Durant vs. The County of Washington was affirmed in the United States Supreme Court. That the bonds and coupons were negotiable instruments, and the holders had received them for value, at a time when the State Courts held that they were valid, and that any subsequent decision of the State Courts, adverse to their validity, impaired the obli-

gations of the contract, and that they were entitled under the constitution of the United States to a decree in their favor. The said Durant and others further answered and set up the second judgment in favor of Durant in the United States Circuit Court for Iowa for $70,652, and averring that said judgment was a bar to the remedy sought. It was also agreed, by the attorneys for Washington County, that the County had appeared in the United States Court and resisted the plaintiff's (Durant) recovery on the same grounds set up in this bill, and that the defendant brought the cause to this Court and the writ of error was dismissed, and that the second judgment of Durant was rendered by agreement.

The recent Acts of Congress having authorized the transfer of this cause to the Federal Court on the 28th of March, 1868, Durant and others applied in due form for the transfer. The State Court overruled the applications, and that the April term, 1868, upon bill and answers and exhibits above, held the bonds unconstitutional and void, and perpetually enjoined the collection of any taxes to pay the principal or interest on such bonds. Durant and others, bondholders of the Mississippi and Missouri Railroad, appealed to the Iowa Supreme Court, and sought to reverse the same upon the sole ground that the decision below impaired the obligations of the contract. The Supreme Court of Iowa in December, 1868, affirmed the decree below, and by their decree impaired the obligation of the contract. The judgment of the Court, and opinion of the Court, both by the laws of Iowa, a part of the record, de-

clare, that the plaintiffs in error made the question, that the decision impaired the obligation of the contract, and that the Court decided adversely to the plaintiffs in error.

There is no argument for us to make here. All objections to the jurisdiction that the Supreme Court of Iowa might have decided this cause in some other than the constitutional question, are obviated by the Supreme Court of Iowa placing in the judgment that it has so decided, and in the opinions of the Court, which is a part of the record. The Court says: "That the only point we make is that the decision impairs the obligations of the contract." They decide against us. This Court has so repeatedly decided the question in our favor, that we have as little inclination to argue it as the Court has to hear the repetition. We pray that the judgment may be reversed.

GRANT,

For the Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

No. 133 and No. 134.

The Board of Supervisors of Washington County, Iowa, Plaintiffs in Error.

vs.

The United States Ex. Rel. Clarke Durant.

Also same, *vs.* United States Ex-Rel. Richard Mortimer, No. 137. In error to the Circuit Court of the United States, for the District of Iowa.

DECEMBER TERM 1869.

Argument of HENRY STRONG, Attorney for Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

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DECEMBER TERM 1869.

Argument of HENRY STRONG, Attorney for Plaintiffs in Error.

As the three above entitled causes involve the same questions of fact and law, except as herafter distinguished, I shall submit in one brief, what I have to say in all. The record sufficiently shows the facts and legal issues. I am not aware that in the County Bond controversy, any similar question has been brought before this Court, although it is true that the question in these, no less than in other cases heretofore decided, is one of jurisdiction. By agreement of Counsel, the transcript of record of the injunction suit in the State Court, and which is attached to No. 134, is to be considered as filed in each of the other cases:—see page 10, record in case No. 137.

There is this difference in case No. 133, from 134 and 137. The suit by Clark Durant vs. Washington County, in which the judgment referred to in case No. 133 was obtained against the County, was instituted August 15th, 1860, and before

Clark Durant had become a party, defendant to the injunction suit in the State Court. While the judgments against the county, to enforce which, the suits Nos. 134 and 137 are brought, were recovered in suits instituted by the respective Relators against the county long subsequent to the injunction suit in the State Court, and long after said Relators had become parties to the suit in the State Court—had filed their answers therein, and had, as I contend, become bound and concluded by all subsequent orders and decrees of that Court.

The records shows that on the 12th day of April, 1860, McClure, *et al.*, tax payers of the county, filled their bill in equity in the State Court, against Owen, the County Treasurer, and Young the County Judge, who were served with notice. The bill alleges the illegality of the bonds, that defendants are about to levy a tax to pay the interest—makes the M. & M. R. R. Co. to which the bonds were issued, parties defendants, prays that holders of the bonds when known, be made parties, and that the bonds be declared illegally issued, void, &c. See page 27 of Record in case No. 134.

The Bill further prays for writ of injunction to restrain the County Judge and his successors from levying, and the County Treasurer and Collector and his successors, from collecting the tax, and that the holders of the bonds when ascertained, be enjoined from collecting said tax, and for general relief. On the 27th of April a writ of injunction was granted by the Judge of the State Court and was issued and served the same day upon the County Judge and Collector. Record page 44. On the 14th day of November, 1860, Relators Clarke Durant and Richard Mortimer, on their own motion, became parties to the injunction suit and filed answers. This is alleged by defendants and admitted by demurrer of Relators. It is also in the same manner admitted by Relators, that they thus became parties to the suit in the State Court before they brought their suits against the county, except the first suit brought by Durant.

The Relators also filed in the injunction suit in the State Court, an answer or plea alleging the pendency in the Federal Court of the original suit of Clark Durant, against the county. Page 12 of the Record. Also alleging that the county had pleaded in that suit the pendency of the injunction suit in the State Court.

On the 17th of June, 1865, a final decree was entered in the injunction suit, restraining the county officers from levying and collecting any tax to pay the principal or interest of the bonds, and restraining the holders of the bonds including the Relators from taking any steps to collect these bonds and declaring the bonds to be void. See pages 10 and 11 of Record in case No. 134.

On the 20 of September, 1865, the Relators appealed from the decree of the District Court, in the injunction suit to the Supreme Court of Iowa—page 15 and 16 of same record. The Supreme Court reversed the decree and ordered that further proceeding be had in Court below, in accordance with the opinion of the Court. The mandate of Supreme Court commands the Court below to proceed in the same manner as if no final decree or judgment had been rendered by the District Court, and no appeal had been taken. Page 17 Record. The opinion of Supreme Court, (see page 18 Record,) states that the final decree must be reversed, for the reasons:

1st.—That the Board of Supervisors has not been substituted as the nominal successors of the County Judge.

2d.—Because without consent of defendants, the final decree had been made and entered in vacation. The reversal was upon technical grounds merely, and left the injunction in full force, as the mandate of the Supreme Court shows—Sept. 24th, 1866, Board of Supervisors were substituted as defendants in place of County Judge, in injunction suit. See page 10 of Record. The case was then continued from term to term of the District Court of the State until the January term 1867, at which Relators filed an additional answer,

alleging that the jndgment in the first of the original suits of Clark Durant *vs.* Washington County, had been affirmed in Supreme Court United States. Page 20 Record. Relators also pleaded at the January term 1867, in bar of the injunction suit, the judgment recovered in the United States Circuit Court, in the 2d of the original suits of Clark Durant *vs.* Washington County. Page 21 Record.

On the 17 day of September, 1867, it is agreed "This cause is submitted to the Court in written argument and may be decided in vacation as of this term." By this agreement of Relators, the injunction suit was finally tried and submitted at September term 1867, and final decree rendered as of that term, see page 22 of Record. In accordance with said agreement a final decree was rendered therein, making purpetual the temporary injunction, and perpetually enjoining the Board of Supervisors from levying and collecting any tax to pay the bonds, and perpetually enjoining Relators from ever proceeding to collect said bonds by taxation. Page 26 and 27 of Record.

In March 1868, some six months after final submission, Relators filled affiidavit and motion to transfer the case to Circuit Court of United Stated. See pages 22, 23, 24. This motion was overruled. See page 25.

It will be seen by page 56 Record, that the motion to substitute Board of Supervisors had been made in January 1864, and before the first decree in State Court, but that the record was defective in not showing the fact.

All of the foregoing facts are set out in answer of Respondents in the three causes at bar. That is the original suit in the State Court, and that Relators were defendants therin and contested the same. That they came under the jurisdiction of the State Court on their own motion, and gave to that Court complete jurisdiction of their persons and of the subject matter of the suit, long before they begun either of the two last suits, on which they recovered judgment

against the County: That they continued parties to that suit until final decree therein. The subject matter of that suit was:

1st.—The question of the legal validity of the bonds.

2d.—The obligation of the Board of Supervisors to levy a tax to pay them.

3d.—The right of Relators by legal process to compel the collection of the tax to pay the bonds. The decision of the State Court was against Relators upon all of these points.

Relators now say the decree of the State Court was not binding:

1st.—Because the same defence was pleaded by the County in the suits upon the bonds, and overruled by the United States Circuit Court.

2d.—Even if such a defence were a good plea to the suit, on the bonds, it is not a good plea in the suits at bar, after judgment rendered against the county on the bonds, as this proceeding is merely auxillary to the original suits, a form of execution, &c.

Before refering more particularly to the questions raised, it is proper to state that Relators demurred to the answer by Board of Supervisors, pleading the proceedings and judgment in the State Court, in bar of this proceeding, which demurrer was sustained by the Court below, and from this ruling respondents appeal.

I have not much to say as to first three grounds of demurrer.

1st.—The record *does* set out the judgment of the Supreme Court of Iowa, reversing the first decree of the District Court of the State, and also gives in full the mandate and the opinion of the Court which governed the subsequent proceedings in the District Court.

2d.—The answer avers that Relators suit on the bonds in U. S. Circuit Court, was subsequent to his appearance, and answer in the suit in State Court, which fact is admit-

ted by demurrer. The exact date of the commencement of Relators suit in this court is not material.

3d.—The judgment of the State Supreme Court did not dissolve the injunction, as the mandate shows. The final decree was reversed because it was against some parties, who, (the Board of Supervisors,) had not been substituted *eo nomine* as Defendents, and because the final decree had without consent of parties, been made in vacation. This did not touch the equity of the original bill, or the injunction based upon that equity. It merely affected matters of practice, which had arisen subsequently in the progress of the suit. Otherwise, the Supreme Court, under the Iowa practice, would have rendered a final decree, instead of remanding the case for further proceedings in the lower Court.

But even if the Sureme Court of the State had dissolved the injunction, this would not releive the Relators from the effect of the subsequent final decree in the case, which respondents allege is in full force and effect, and which has been since affirmed by the Supreme Court of this State. See Owen *vs.* McClure and others, 21 Iowa Reports 133.

The legal questions raised by the 5th, 6th and 7th grounds of Relator's demurrer to Respondents answer, are substantially the same.

Upon them I submit; *first*, Respondents did plead the suit in the State Court in answer or bar to the suit against the county in the U. S. Circuit Court. This plea was held bad upon two grounds.—1st: The county, by name, was not a party defendant in the injunction suit. The Board of Supervisorn were defendants, and the County could not plead in bar, the pendency of a suit in the State Court to which it was not a party.

2d.—Even if the county had been party defendent to the suit in the State Court, it could not plead a pending suit in bar, or abatement of the suit on the bonds. It could only plead a judgment of the State Court; but no judgment had

been rendered, that is to say, no final decree.—*non constat.* that a judgment ever would be rendered against the county or Board of Supervisors in the suit in the State Court.

I submit that the plea in abatement of *Lis pendens* was a good plea, and under the circumstances, should have been sustained, but more upon this point hereafter.

The 6th ground of demurrer contains a contradiction of facts, for it is not true that the Relator, Durant, commenced his action on the county bonds in the U. S. Circuit Court, as to his second and principal case before he intervened in the State Court and became a party to the injunction suit in that Court. See folio 20, of page 9 of record, where it is dictinctly averred by respondents, that Relator's action to recover judgment on the bonds or interest coupons in the U. S. Circuit Court, was long after he had filed his answer in the State Court. Relator cannot traverse this allegation by a demurrer. The same is true in the case of the relator Richard Mortimer. The answer of respondents in case No. 134 is by agreement made their answer in the Mortimer case No. 137, as shown by stipulation of Counsel on page 10 of record in case No. 137.

Mortimer states as one ground of demurrer, in No. 137, that he was a party in interest in the first original suit of Clark Durant against the county. This is not true in point of fact. He could not have been made a party. He was not a party to that suit. He could not have been joined with Durant as party plaintiff in bringing suit on the bonds.

The record shows Clark Durant alone as plaintiff, and the writ of mandanus shows on its face that Clark Durant alone, in that suit, recovered judgment against the County.—See folio 9, of page 5, of Record on Case No. 133.

Relator Durant, also states as ground of demurrer to respondent answer, "That the proceedings in the State Court, "being a judgement impairing the obligation of contracts, "are null and void, and binding on no one."

This falacy was fully exposed by this Court in the case of the Mississippi & Missouri R. R. Co. *vs.* Rock, 4th Wallace, page 117, where the Court say: "The whole case in "the language of the brief is put upon the ground that Su- "preme Court of Iowa, has made a decision which impairs "the obligation of contracts, and the argument goes upon "the fundamental error that this Court can, as an appellate "tribunal, reverse the decision of the State Court, because "that Court may have held a contract to be void, while "this Court might hold to be valid. If this were the law "every case of a contract held by a State Court not to be "binding, for any cause whatever, might be brought here for "review, and we should thus become the court of final resort "in all cases of contract where the decision of the State "Courts were against the validity of the contract set up in "the case. This obviously, was not the object of the judi- "ciary act. *It must be the Constitution* or *some law of the* "*State* which impairs the obligation of the contract, or the "case for this Court does not arise." 14 How, R. 149—16 Peters, R. 525.

The case just referred to involved the very question raised by the ground of demurer I am now discussing; that is to say the conclusiveness of the judgment or decree of the State Court, *in a suit identically the same* as the one pleaded in the cases at bar. In that case, as the record shows, the tax payers brought suit to enjoin the collection of tax upon bonds issued by the county to the same railroad company. Rock became a party defendant, the same as Durant & Mortimer in the cases at bar. The decree of the State Court was against him, and this Court held that the judgment of the State Court was conclusive and a complete bar to his recovering in this Court whatever might be the opinion of this Court upon the legal soundness of the decision in the State Court.

But I take it that the main ground of demurrer upon which Relators rely in the cases we are considering, is that which raises the question whether any judgment in the State

Court can be pleaded so as to interfere with the enforcement or collection of a judgment rendered in the Federal Court.

I find no case where the same question has been raised upon the same state of facts.

The question is one of jurisdiction, and is to be decided in the light of those fundamental canons of interpretation which furnish a ready, and the only solution in cases of concurrent and conflicting jurisdiction.

In the administration of the powers of the Federal court, it is recognized as a fundamental principle, that the judgment of the State court is binding upon the Federal court, when the State court had jurisdiction of the parties and subject-matter, and the controversy aries out of a contract created under the laws of the State: and the Federal courts are powerless to reverse, modify, or in any manner interfere with such a judgment of the State court, and cannot relieve a party from obedience to a writ issued thereon.

In Corrydon, *et al. vs.* Goodman & Bladsoe, 2 Black, 574, this Court have said, Chief Justice Taney delivering the opinion, "that a controversy, where no right is claimed under the Constitution and laws of the United States, is *exclusively* within the jurisdiction of the State court, and this Court has no appellate power over its judgments."

In Randall *vs.* Howard, 2 Black, 585, the Court say "The bill in this case brings in review various matters passed on in the progress of a suit by the Cecil county circuit court, a court of general jurisdiction, having complete control of the parties and subject matter of controversy. It seeks to annul a sale of lands made by virtue of a decree of the Cecil court, sitting as a court of equity in a cause depending between these same parties, to effect the distribution of the proceeds of the sale, to enjoin the defendant from making any disposition of the land purchased by him." * * * "Has this Court jurisdiction? A conflict of jurisdiction is always to be avoided. Mr. Justice Grier, in Peck *vs.* Jenness, 7 Howard, 624, says that it is a doctrine too long established

to require a citation of authorities, that where a court has jurisdiction it has a right to decide every question that occurs in the cause, and whether *its decision be correct or not*, its judgment, until reversed, is regarded as binding upon every other court, "These rules have their foundation not merely in comity, but in necessity; for if one may enjoin, the other may retort by injunction, and thus the parties be without remedy. *being liable to a proces for contempt in the one, if they dare to proceed in the other.*"

In Lessee of Paris *vs.* Ferris *et als.*, 2 Black, 606, this Court say, "This Court acknowledges the rule, and has uniformly applied it, of the conclusiveness of a judgment of a Court of concurrent jurisdiction between the same parties or their privies upon the same question."

This Court are to regard this proceeding in the same light as if this were another Court in the same State, of concurrent jurisdiction with the Court by whose judgment and decree the respondents are enjoined from doing what the relator seeks to compel them to do. Where the State and Federal courts have concurrent jurisdiction, they bear the same relation to each other as the courts of the same State having concurrent jurisdiction, and are absolutely concluded by the decrees of each other.

In Mills *vs.* Duryee, 7 Cranch, 480, this Court in speaking of the conclusiveness of the judgments of State courts upon the Federal courts, and of the act of Congress of May 26, 1790, chap. 11, giving this effect, say: "We can perceive of no rational interpretation of the act of Congress, unless it declares a judgment conclusive when a court of a particular State where it is rendered would pronounce the same decision."

It has been freqently held that whichever court, State or Federal, first acquired jurisdiction can maintain it to the end, and the other cannot in any manner interfere, however illegal or wrongful may be the judgment of that court. (Freeman *vs.* Howe *et al.*, 20 How., 451.)

Persons, no less than property, in the custody of the law by the writ of a State court, are withdrawn from the effect of the process of the courts of the United States.

In the leading case of Taylor *vs.* Carryl, 20 Howard, p. 583, Chief Justice Taney, in dissenting, says, on pages 607–8: "This court, in deciding the case of Hogan *vs.* Lucas, (10 Peters, 400,) did nothing more than adhere to the rule which, I believe, is universally recognized by courts of justice; that is, that, between courts of concurrent jurisdiction, the court that first obtains possession of the controversy or the property in dispute must be allowed to dispose of it finally, without interference or interruption from the coordinate court. And this rule applies where the concurrent jurisdictions are two courts of the United States, or two courts of a state, or one of them a court of a State and the other a court of the United States. It was no new question when the case of Hogan *vs.* Lucas came before this Court, but an old and familiar one, upon which courts of concurrent jurisdiction have uniformly acted, in order to prevent indecorous and injurious conflicts between the courts in the administration of justice." The learned Chief Justice further says, on page 610: "I agree with the majority of my brethren, in regarding it *as among the first duties of every court of the United States carefully to avoid trespassing upon the rights reserved to the States, or interfering with the process of their courts when they are exercising the concurrent jurisdiction in the matter in controversy. And with the high trusts and powers confided by the Constitution to the Supreme Court, it is more especially its duty to abstain from such interference itself, and to revise carefully the judgments of the inferior courts of the United States whenever that question arises, and to reverse them if they exceed their jurisdiction.*" * * * *

I have ilaticized the foregoing from the opinion of Chief Justice Taney, as in my judgment the language used is of great significance, and vitally applicable to the case at bar. Paine *vs.* Drew, 4 East., 523: see 20 Howard, page 575.

In *ex parte* Robinson, (6 McLean R., 363,) in which the learned Chief Justice of this Court was of counsel, Judge McLean says: "There is no instance, it is believed, where a Federal court has disregarded the decision of a State court, where it possesses no appellate power."

This court have said in Elliot *vs.* Piersol, 1 Peters, 328, "it is argued that the circuit court of the United States had no authority to question the jurisdiction of the county court of Woodford county, and that its proceedings were conclusive upon the matter, whether erroneous or not. We agree that if the county court had jurisdiction its decisions would be conclusive," &c. In Stearns *vs.* United States, 2 Paine, C. C. R., 300, the court say "State courts are not inferior tribunals in the sense of the Constitution;" * * * and farther, "The State courts may exercise jurisdiction in all cases authorized by the laws of the State and not prohibited by the exclusive jurisdiction of the Federal courts. Without express provision to the contrary, the State courts will retain a concurrent jurisdiction in all cases where they had jurisdiction originally over the subject-matter. It is however, optional with the State courts to exercise such jurisdiction or not."

In the case of Rhoades & Snyder *vs*, Selin, 4 Wash. C. C. S, 715, the court say, "I take the rule to be clearly settled by the Duchess of Kingston's case; that when the matter adjudicated is by a court of peculiar and exclusive jurisdiction, and the same matter comes incidentally before another court, the sentence in the former is conclusive upon the latter as to the matter directly decided, not only between the same parties, *but against strangers, unless it can be impeached on the ground of fraud or collusion," which is not attempted in the cases at bar.* (Parker *vs.* Kane, 22 How, 1.)

In Leffingwell *vs.* Nassen, 2 Black, 596, this Court have said "The construction given to a state statute by the highest judicial tribunal of such a state is regarded as a part of the statute, and is as binding on the courts of the United

States as is the text. If the highest judicial tribunal of the State adopt new views as to the proper construction of such a statute, and reverse its former decisions, this Court will follow the latest settled adjudications. (See also Shelby *vs.* Guy, 11 Wheat. 351; McClung *vs.* Cilliman, 3 Peters. 270; Green *vs.* Neil's lessee, 6 Peters, 291; Ross *vs.* Duvall, 13 Peters, 45; Massingall *vs.* Downs, 1 How., 767; Nesmith *vs.* Sheldon, 1 How., 812; Van Ransalear *vs.* Kearney, 11 How., 297; Webster *vs.* Cooper, 14 How., 405; United States *vs.* Morrison, 4 Peters.)

"A controversy once decided by a competent tribunal cannot be re-examined by another court of concurrent jurisdiction," and in the case at bar this Court cannot relieve respondents from the judgment of the State court. (Lessee of Parish *vs.* Ferris, 2 Black, 606.)

This Court has never reviewed the judgment of an inferior court of a State, where there was an appeal to the supreme court of the State upon a subject within the jurisdiction of that court. (Adams *vs.* Preston, 22 How., 473. Jetter *vs.* Jewett, 2 How., 352. Beauregard *vs.* City of New Orleans. 18 How., 497. Almonster *vs.* Kenton, 9 How., 1. Strader *vs.* Baldwin, 9 How., 261.)

In Metts *vs.* Brown, 16 Peters, 525, appeal from supreme court of Illinois, Chief Justice Taney, in delivering the opinion of the Court says: It is true that both plaintiffs and defendants have waived all objections to jurisdiction and have pressed the Court for a decision upon the principal points; but consent will not give jurisdiction, and we have therefore, on several occasions, said that when the acts of Congress had so carefully and cautiously restricted the jurisdiction conferred upon this Court over the judgments and decrees of State tribunals, it would ill become the Court to exercise it in a different spirit; and it certainly could not be justified in expressing an opinion, favorable or unfavorable, as to the correctness of this decree, *when it has not the power to affirm or reverse it.*"

The question then arises, which Court first obtained jurisdiction, the State or Federal? So far as regards the cases —Nos. 134 and 137—the record shows that the State court first acquired jurisdiction both of the subject matter and of the parties. That the suit, in the State court, was brought in April, 1860, and service of process made upon all of the defendants in the same month, and that Relators became parties to the suit in November, 1860, and before they had brought their suits upon the bonds in the Federal court. This is avered by respondents, and admitted by the demurrer, and is nowhere denied. Part of the subject matter of the suit, in the State court, was the validity of the bonds and the right of Relators to collect them by legal process. As we have already seen, the case in the State court was finally tried and submitted at the September term, 1867, and a decree entered as of that term, in the following May, 1868. That decree declared the bonds void, and it also prohibits the Relators, as holders of the bonds, "*from proceeding to collect said bonds by taxation upon the people or property of said county.*"

Relator is now, for the first time, "attempting to collect said bonds by taxation upon the people and property of said county." The decree of the State court, in the suit to which he was a party, prevents him from so doing. Now, for the first time, and in this proceeding, he is seeking to do what he is enjoined from doing by the said decree. When he brought suit on his bonds to recover judgment *non constat*, that the county would not pay the judgment, or, that he might not levy a general execution upon property of the county. Now, for the first time, can the tax-payer of the county avail himself of that part of the decree recited, which prohibits Relator from "collecting said bonds by taxation." He, therefore, certainly has not, by laches, lost his right to make the plea available for his protection. But relator Durant says that he brought one suit in the United States court, on coupons, in August, 1860, before he became, a party, in November, to the suit in the State court

and that the origin of the State court jurisdiction, as to him, dates from November, 1860, as to its effect upon his rights in all subsequent suits upon coupons of the county, brought by him in the United States Circuit court. This theory would have more show of reason, if the United States Ciruit court possessed original jurisdiction to compel, by writ of *mandamus*, the collection of the tax to pay the bonds or coupons. It possesses no such power. It can issue the writ only in a proper case made in aid of its *judgment*. Relator not only had no judgment in his second case when he became a party to the suit in the State court, but he had not even brought suit on the coupons on which he has since recovered judgment. He had said or done nothing to indicate to the court that he was the owner of these coupons, or ever would own them or bring suit upon them. Certainly the court had acquired no jurisdiction of the subject matter of the second suit on coupons, which suit had not yet been brought when Relator became a party to the suit in the State court.

Counsel are disposed to give to the first suit of Clark Durant a most potential and far-reaching prophylactic effect, where it is made not only the source of all healthful, legal life, but the great defender, for all time to come, of all the bonds issued by that county, by whomsoever held, against the malign and morbid influence of the state tribunals.

I submit to the Court, that when Clark Durant, in November, 1860, made himself a party to the suit in the State Court, begun in April previous, that he became subject to the jurisdiction of that Court from the origin of its proceeding. That in making answer to the allegation of the bill filed in April, he submitted himself to its jurisdiction over the subject matter from the date of the filing of the bill—and that by bringing suit in U. S. Court upon his coupons in the intervening August, he could not avoid the effect of prior jurisdiction of the State Court. I need hardly argue that the jurisdiction of the U. S Circuit Court in his second Suit is wholly unaffected by the date of his first suit.

That is, the jurisdiction in each case is seperate and independent of the other, both as to person and subject matter.

But Relators says we pleaded to the suit on the bonds, the pendency of the suit in the State Court, and it was held bad. We have already shown that on account of the greater rapidity with which suits in U. S. Circuit Court reach judgment, than suits in the State Court where the dockets are more crowded, Relators, although bringing suits while the suit in the State Court was pending, obtained their judgment before the final decree in the State Court. The record shows that all of Relators judgments were recovered after suit was brought in the State Court, but before final decree. Therefore, even had the county *eo nomine* been a party to the suit in the State court, it could not have pleaded the pendency of that suit in bar of the suit in the Federal court. If, however, it was then a good plea in abatement, it is now a good plea in bar. By the laws of the State, terms of court, at least, are necessary to recover judgment in a chancery case, while a judgment upon coupons can be recovered in the Federal court in ten or twenty days, [depending upon the distance of the residence of defendant] after suit brought.

Such being the case the county would be perfectly helpless and wholly unable to protect itself, notwithstanding the judgment of the State court in its favor, in a case where all parties were before it and involving the same subject-matter, and brought long before the Federal Court had acquired jurisdiction.

Such a solution of the question is, it appears to me, equally unreasonable and unjust.

Relators recovered their judgments in the Federal court before final judgment against them in the State court. Why did they not plead that judgment in the bar of the suit against them in the State court?

Could they have done so? The reason they did not do so, I assume, was two fold. The State court had first ac-

quired jurisdiction, and though there had been no final decree, at the date of Relators judgment, yet the case in the State court had been finally submitted.

It is a novel idea that the court which first renders judgment, shall control the rights of parties, and not the court which first acquires jurisdiction. It is one of the axioms of the law that the court which first acquires jurisdiction shall maintain it to the end, be that end reached in one month or one year, and that no other court can intervene and defeat that jurisdiction, and the final judgment of the court.

Finally: Since the decision of the United States Circuit court sustaining Relators demurrer, in the suit on the bonds, to the plea of the pendency of the suit in the State court, this court have decided, in this class of cases, that the *mandamus* suit against the Board is no more nor less than a continuation in this form of the suit against the county; that the parties defendant are substantially and legally the same; that the Board of Supervisors stand in the stead of the county. This being so, the county could plead in abatement the pendency of the injunction suit, and respondents, in the case at bar, standing as they do, in place of the the county, [the county being still the real party,] can plead in bar the judgment of the state court.

As the court are aware, there is much confusion and conflict upon the question, when and under what circumstances the plea of *lis pendens* in one court can be made in abatement or bar of a suit in another court.

I take it, however, that there is no doubt where the two suits are in one tribunal, and the parties and relief sought are the same sought in both suits, that the pendency of the suit first brought can be successfully pleaded in abatement of the second, and that this is also true even where the suits are not pending in the same court. This is reasonable, and no injustice to either party can result from the court sustaining such a plea.

Therefore, I submit, that under the recent decisions of this court, which regard the county and the board to be one and

the same party, the plea of *lis pendens*, in the State court, was a good plea to the suit upon the bonds. This being so, then the plea in bar is good in the case before the court. The main issue, in all the cases, was the same, to-wit: The legality of the bonds, and the right to levy the tax. If the *mandamus* suit is but a continuation of the suit against the county, these respondents, who represent the county and stand in its place, can plead in bar the judgment of the State court, by the judgment in which, relators having been a party before they brought their suits against the county, are concluded; otherwise, notwithstanding the State court first acquired jurisdiction of the parties and subject matter, and before any suit had ever been brought in the Federal court against the county, and notwithstanding the State court rendered a final judgment between all the parties, holding that the bonds issued in the name of the county are void and that Relator can not maintain his action against the county thereon, nor compel the levy of tax; I say otherwise, notwithstanding all this, Relator is now left free to totally disregard that judgment and treat as naught the decree of the State tribunal, to which, as to two of the cases at bar, he had voluntarily submitted himself before, bringing his action in this Court.

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